

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

NATIONAL-SOUTHWIRE ALUMINUM COMPANY	)	
	)	
V.	)	CASE NO. 9437
	)	
BIG RIVERS ELECTRIC CORPORATION	)	

O R D E R

On February 19, 1986, National-Southwire Aluminum Company ("NSA") filed a motion to compel Big Rivers Electric Corporation ("Big Rivers") to produce certain documents that were not provided in response to requests for information. The documents sought to be produced are the minutes of all Big Rivers' board meetings since 1965 and the ICF Incorporated ("ICF") report including any preliminary drafts, discussions or working papers, or other similar documents. Big Rivers filed a response on February 24, 1986, setting forth its objections to NSA's motion.

MINUTES OF BOARD MEETINGS

Big Rivers initially objected to providing the minutes of its board meetings on the grounds that such a request is overlybroad and places an undue burden on Big Rivers; and that the minutes since 1965 are irrelevant to the issues in this pending complaint case. NSA's motion to compel alleges that since Big Rivers' counsel has stated that the minutes are in existence it would not be burdensome to produce them. NSA further alleges

that the minutes are clearly relevant to the pending case based on the judicial standards of broadly defining relevancy and liberally allowing discovery. NSA argues that the minutes are relevant to the following pending issues: the allocation of off-system sales to the Wilson Unit; the cost of coal to be expensed for rate-making purposes; Big Rivers' alleged diversion of revenues intended for debt service to other undisclosed purposes; and a preferential rate of 22 mills for NSA.

Big Rivers' response claims that all the pending issues arise from events occurring since the commencement of construction of the Wilson Unit on June 20, 1980, and, therefore, any minutes of meetings prior thereto would be irrelevant to these issues. Big Rivers has offered to review and produce those portions of its board meetings relating to the construction of the Green Generating Unit No. 2 and the payment of its bills since the Rural Electrification Administration ceased making loan advances in October, 1984. Big Rivers further states that a substantial portion of its board meetings is devoted to the presentation of a legal report by its counsel and that any portion of the minutes reflecting these legal reports is protected under the attorney-client privilege and not subject to disclosure.

The Commission finds that the issues presented in NSA's complaint arise from events occurring since the commencement of construction of the Wilson Unit and that any minutes of board meetings prior to June 20, 1980, would not be relevant to any issue in this case. Big Rivers should review and allow the

inspection and copying of all minutes of board meetings subsequent to June 20, 1980, and those minutes of prior meetings that relate to the construction of the Green Generating Unit No. 2, subject to the deletion of any portion discussing attorney-client communications.

#### ICF DOCUMENTS

Big Rivers has refused to provide, under the claim of attorney-client privilege for counsel's use in litigation, the financial report prepared by ICF on behalf of Big Rivers' creditors. NSA argues that there is no attorney-client relationship between ICF and either Big Rivers or Big Rivers' counsel, rendering the assertion of that privilege inappropriate.

Big Rivers' response states that its counsel was provided a copy of a limited, preliminary report from ICF in the course of negotiations with Big Rivers' creditors. The ICF report, based on data provided by Big Rivers, NSA and Alcan, is being prepared for the creditors to assist them in negotiating a plan for the restructuring of Big Rivers' finances. Big Rivers asserts that the disclosure of the preliminary report, obtained during confidential, sensitive negotiations, would be disruptive to its goal of obtaining the creditors' agreement to a debt restructure.

Big Rivers further alleges that the nondisclosure of ICF's report will not prejudice NSA since the report is preliminary, contains only a summary description of a financial model and is not based on any facts about Big Rivers which are unknown to NSA. Big Rivers urges that any document generated

through negotiations with its creditors be kept confidential unless and until the document forms the basis of Big Rivers' defense.

The Commission is of the opinion that NSA's request to discover the ICF report must be balanced against Big Rivers' need to maintain a cooperative relationship with its creditors during negotiations to resolve Big Rivers' financial difficulties. Of significant importance is the fact that the ICF report was provided to Big Rivers' counsel in the course of confidential negotiations. The Commission finds that Big Rivers need not produce the ICF report at this time. However, the ICF report must be disclosed if Big Rivers' defense is based on any portion of the report.

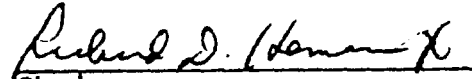
IT IS THEREFORE ORDERED that:


1. NSA's motion to compel the production of the minutes of Big Rivers' board meetings be and it hereby is partially granted to the extent that Big Rivers shall produce, within 7 days from the date of this Order, all minutes relating to the Green Generating Unit No. 2 and all minutes subsequent to June 20, 1980, subject to the deletion of any matter protected by the attorney-client privilege.

2. NSA's motion to compel the production of the ICF report be and it hereby is denied.

Done at Frankfort, Kentucky, this 3rd day of March, 1986.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary